

AGENDA ITEM 13: **Receive report of Commission subcommittee on “Feasible Delta Levee Financing Options Using a ‘Beneficiary-Pays” Approach – Phase 1” report**

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Requested Action: **Receive report of Commission subcommittee**

Background: The Delta Flood Risk Management Assessment District Feasibility Study (now referred to as the Delta Levee Financing Feasibility Study, or the Study) originated in the long-standing policy discussion about how to pay for Delta levees. The Department of Water Resources, which funded the Study, has expressed interest in a beneficiary-pays system for Delta levee improvement and maintenance. The Delta Stewardship Council’s Delta Plan (2013) recommended that “the Legislature should create a flood risk management assessment district ... to provide adequate flood control protection and emergency response for the regional benefit of all beneficiaries, including landowners, infrastructure owners, and other entities that benefit from the maintenance and improvement of Delta levees, such as water users who rely on the levees to protect water quality.” (Delta Plan Chapter 7, Recommendation RR R2).

The Commission has worked with a consultant team led by M.Cubed since 2015 on this effort. Most recently, the Commission’s subcommittee on this project (Chair Thomson and Commissioners White, van Loben Sels and Ferrara/Tjernell) has met on two occasions (February 16, 2017 and April 17, 2017) to hear comments on the draft report (December 1, 2016 version).

The Commission has received recent comments on the draft report from the following:

- California Farm Bureau Federation (January 18, 2017)
- Sacramento Regional County Sanitation District - Regional San (February 2, 2017)
- Delta Stewardship Council (February 28, 2017)
- North Delta C.A.R.E.S. Action Committee – Letter 1 (February 28, 2017)
- North Delta C.A.R.E.S. Action Committee – Letter 2 (February 28, 2017)
- California Central Valley Flood Control Association (March 1, 2017)
- State Water Contractors (March 2, 2017)

The letters provided a mix of comments, mostly critical of different aspects related to the proposed funding sources and list of beneficiary groups. Aside from comments related to the accuracy of information presented in the draft report (which are addressed in the April 17, 2017 redline changes in the report and technical appendices), some of the specific criticisms were:

- 1) Local Delta landowners and flood/agricultural interests expressed concern that the study had evolved from an analysis of a proposed Delta-wide assessment district to a

“beneficiary-pays” analysis (see discussion below). They also are concerned that a “beneficiary-pays” system might cause them to pay more than the benefits received, and that benefits to in-Delta interests might exceed the contribution from reclamation district assessments.

The report does not estimate the benefits accruing to different levee beneficiaries because definitive data and analysis is not yet available on levee costs (an expected outcome from the DLIS study that was not delivered) and the benefits for individual interests. It is possible that the current reclamation district assessments are subsidizing other beneficiaries to some extent (Delta interests are net-payers). It is also possible that the current reclamation district assessments do not cover the full benefit received by those paying the assessments (Delta interests are net-beneficiaries). Not every situation in the Delta is alike, and this study does not settle that question: it calls for additional analysis in the next phase of work to determine level of benefit received. The draft report also states that no beneficiary group should pay more for levee work under a “beneficiary-pays” approach than their benefit received.

- 2) Other commenters, such as the State Water Contractors and Regional San, believe that the benefit they receive from Delta levees were overstated in the draft report, and thus the discussion of the financial responsibility for “levee work” attributed to their beneficiary group was inaccurate. *It should be noted that the draft report includes clear comments about both further analysis needed for determining the level of benefit received, and further vetting the proposed funding sources in a phase 2 effort.*
- 3) In general, most commenters believed that others (other beneficiaries, the State) should be responsible for costs to supplement local funding generated through reclamation district assessments. For in-Delta interests, there appears to be a preference for continued reliance upon general obligation bond funding to provide the non-local share for levee financing.

How did an Assessment District Feasibility Study become a “Beneficiary-Pays” study?

The original Scope of Work for this study called for a feasibility study of a Delta-wide Assessment District. Upon initiating work, the consultant determined that an “assessment district” under current law (Proposition 218 especially) could not reach beneficiaries that do not own land in the Delta. Further, the scope of the Delta Levee Investment Strategy (DLIS) changed and DLIS work products (beneficiary analysis and cost allocation) that were planned and anticipated at the time of the M.Cubed contract execution were not completed.

As a result, the analysis focused on developing potential funding mechanisms to accomplish “beneficiary-pays” – those beneficiaries who benefit from Delta levees pay for the costs of levee work. This approach was the proper analysis to undertake because the Scope of Work (and the Delta Plan recommendation, which the Scope of Work was based on) identifies all beneficiaries (including landowners) that could be assessed under the proposed Delta-wide assessment district.

Once on the “beneficiary-pays” path, the consultant evaluated categories of beneficiaries and investigated potential funding mechanisms that would be feasible to capture support from those entities. Some of the beneficiaries have high “transaction cost” (it would cost more to collect from recreational boaters for boat wake damage, for example, than the amount needed to be raised to meet their level of benefit) and so get folded into the “public cost” that the State covers.

The draft report proposes a suite of proposed fees, intended to collect from the full range of Delta levee beneficiaries an amount corresponding (though not exceeding) the level of benefit they would receive from levee work. To repeat: ***Beneficiaries would not provide more support for levee work under a “beneficiary-pays” approach than the level of benefit they receive.***

At the conclusion of the April 17 Commission subcommittee meeting, the subcommittee voted unanimously to recommend that the full Commission transmit the report to DWR with a transmittal statement expressing its concerns (including the following: maintaining existing DWR Delta levee programs and supporting the 75%-25% cost share in the Delta Levees Subventions Program; improving all Delta levees to a base level of protection before moving to a “beneficiary-pays” system; ensuring that any funding collected under a “beneficiary-pays” system would be spent for the benefit of paying beneficiaries and not on advancing Delta-wide priorities through the Delta Levees Investment Strategy).

Commission staff continue to work on additional redline edits to the draft report, as well as crafting a draft Commission transmittal statement. It is anticipated that the Commission subcommittee will be convened again in late June and that the consideration of the final report and transmittal statement will be on the Commission’s July 20 agenda.